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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,409	09/12/2003	Stuart I. Smedley	04813.0023.NPUS02	6639
7590 Sean D. Burdick Snell & Wilmer, LLP 600 Anton Blvd. Suite 1400 Costa Mesa, CA 92626-7689			EXAMINER MAPLES, JOHN S	
			ART UNIT 1745	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/661,409	Applicant(s) SMEDLEY ET AL.	
	Examiner John S. Maples	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-72 ~~is~~ are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-72 ~~is~~ are allowed.
- 6) ☒ Claim(s) 27-29 ~~is~~ are rejected.
- 7) ☒ Claim(s) 30-48 ~~is~~ are objected to, BECOME DEPENDENT ON A REJECTED CLAIM(S).
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of Embodiment XI in the reply filed on January 16, 2007 is acknowledged. The traversal is on the grounds that each embodiment describes a process step for transitioning the current operating state of the fuel cell system responsive to sensing a control variable. This is not found persuasive because each of the above process steps are materially different and as applicant has stated, they comprise a process step, which steps are not the same and would in themselves support their own patent.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by either Manery-US 6,979,504 (Manery) or Ballantine et al.-US 6,979,506. (Ballantine)

Reference is made to column 6, line 23 through column 7, line 35 and in particular column 7, lines 17-35 and Figure 3 of Manery for the operating of a fuel cell system where a performance drop is detected and a flush state is initiated. This portion of Manery also sets forth sensing a power demand in the fuel cell system and then fuel is added to transition the fuel cell to a discharging state.

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With regard to Ballantine, see Figures 1-3 along with column 5, line 30 through column 6, line 36 for the monitoring of a fuel cell system and when a performance characteristic is noted, a flush state is initiated-see lines 26-36 in column 6. Also, when there is a change in the power output, then the fuel flow direction within the fuel cell is changed and the fuel cell operates in a discharge mode.

4. Claims 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Herron-US 6,242,120. (Herron)

Reference is made to column 2, lines 22-33 of Herron along with column 3, line 36 through column 4, line 12 where a purge of the fuel cell system is initiated when a process parameter(s) is detected by a detection system.

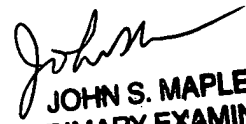
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 571-272-1287. The examiner can normally be reached on Monday-Thursday, 6:15-3:45, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSM/4-2-2007


JOHN S. MAPLES
PRIMARY EXAMINER